National Labor Relations Board Weekly Summary of NLRB Cases

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(R-2586): Labor Board Invites Amicus Briefs to be Filed on Dana Corp. Pending Cases

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Engineered Comfort Systems, Inc. (7-CA-48348; 346 NLRB No. 62) Dearborn Heights, MI March 20, 2006. The administrative law judge found, and the Board agreed, that the Respondent's president, Ronald Rodorigo, violated Section 8(a)(1) of the Act by telling employee Russell Gallette, "I can't believe you're going union; you want to bring the whole f---ing world down with you." It also agreed with the judge's dismissal of the allegation that the Respondent violated Section 8(a)(3) prior to discharging Gallette, by transferring Gallette from service to installation work, changing his start time, and withdrawing his vehicle and cell phone privileges. [HTML] [PDF]

The Board reversed the judge's finding that the Respondent, in discharging Gallette, violated Section 8(a)(3). The judge found that the General Counsel established his initial burden under *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert denied 455 U.S. 989 (1982). She decided that the Respondent failed to rebut that case, concluding that Gallette's discharge for his attendance infraction was inconsistent with the Respondent's lenient treatment of similar infractions by other employees. Assuming without deciding that the General Counsel has met his *Wright Line* burden, the Board found, contrary to the judge, that the Respondent successfully rebutted the General Counsel's case by showing that it would have discharged Gallette for being a 2-day no-call/no-show even in the absence of his protected activity. It agreed with the Respondent that the judge improperly based her finding on the Respondent's treatment of employees who were not similarly situated to Gallette.

(Chairman Battista and Members Schaumber and Walsh participated.)

Charge filed by Plumbers Local 636; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Detroit, May 25-26, 2005. Adm. Law Judge Margaret G. Brakebusch issued her decision Aug. 5, 2005.

State Bar of New Mexico (28-RC-6077; 346 NLRB No. 64) Albuquerque, NM March 24, 2006. Chairman Battista and Member Schaumber, with Member Walsh dissenting, determined that the Employer is exempt from the Board's jurisdiction and, accordingly, reversed the Regional Director's Decision and Direction of Election and dismissed the petition filed by Communications Workers Local 7011. [HTML] [PDF]

The issue presented in this case of first impression is whether the State Bar of New Mexico is exempt from the Board's jurisdiction under Section 2(2) of the Act. The Regional Director found that the Employer is not a political subdivision within the meaning of Section 2(2) and is subject to the jurisdiction of the Board. The Regional Director thereafter, directed an election in the petitioned-for unit of employees employed at the Employer's Albuquerque, NM facility.

Citing *NLRB v. Natural Gas Utility District of Hawkins County*, 402 U.S. 600, 604-605 (1971), the majority wrote: "[A]n entity is exempt from the Board's jurisdiction as a political subdivision if it is either: (1) created directly by the State so as to constitute a department or an administrative arm of the government, or (2) administered by individuals who are responsible to

public officials or to the general electorate." They found, contrary to the Regional Director and their dissenting colleague, that the State Bar of New Mexico is exempt from the Board's jurisdiction as a political subdivision because it was directly created by the State as an administrative arm of the judicial branch of government.

In dissent, Member Walsh wrote:

In finding the State Bar of New Mexico to be exempt,... the majority focuses on its quasi-public functions and certain indirect indices of control which the New Mexico Supreme Court exercises over it. I would focus, as other Board decisions have, on the State Bar's day-to-day operations and the personnel and labor relations issues that directly affect its employees. The New Mexico Supreme Court has little or no control over these matters; they are instead controlled by private actors who are acting within the structure of a private nonprofit organization. When viewed in this light, it seems clear that the State Bar does not qualify as a political subdivision under Section 2(2) of the Act. Accordingly, in agreement with the Regional Director, I would find that the Board has jurisdiction over the State Bar's employees, and I would process this petition.

(Chairman Battista and Members Schaumber and Walsh participated.)

LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

FiveCAP, Inc. (Teamsters Local 406) Scottville, MI March 23, 2006. 7-CA-37282, et al.; JD(ATL)-11-06, Judge Keltner W. Locke.

Moeller Aerospace Technology, Inc. (Auto Workers) Harbor Springs, MI March 23, 2006. 7-CA-48929; JD-19-06, Judge George Alemán.

McKenzie Engineering Co. (Carpenters Local 410) Ft. Madison. IA March 23, 2006. 33-CA-11408; JD(ATL)-09-06, Judge Michael A. Marcionese.

Saint Gobain Abrasives, Inc. (Auto Workers Region 9A) Worcester, MA March 24, 2006. 1-CA-41623, 1-RD-2003, 2049, 1-RM-1258; JD-23-06, Judge Arthur J. Amchan.

Small Stuff, Inc. (Teamsters Local 505) Huntington, WV March 24, 2006. 9-CA-41920; JD-22-06, Judge Earl E. Shamwell Jr.

NO ANSWER TO COMPLAINT

(In the following case, the Board granted the General Counsel's motion for summary judgment based on the Respondent's failure to file an answer to the complaint.)

SK USA Cleaners, Inc. (Journeymen and Allied Trades Local 947) (22-CA-26959; 346 NLRB No. 63) Garfield, NJ March 22, 2006. [HTML] [PDF]

LIST OF UNPUBLISHED BOARD DECISIONS AND ORDERS IN REPRESENTATION CASES

(In the following cases, the Board considered exceptions to and adopted Reports of Regional Directors or Hearing Officers)

DECISION AND ORDER DIRECTING HEARING [on portions of Employer's Objections 1 and 2]

Alta Bates Summit Medical Center, Berkeley and Oakland, CA, 32-RC-5393, March 23, 2006 (Members Liebman, Schaumber and Kirsanow)

(In the following cases, the Board adopted Reports of Regional Directors or Hearing Officers in the absence of exceptions)

DECISION AND CERTIFICATION OF RESULTS OF ELECTION

A.S.C. Inc., Gibraltar and Livonia, MI, 7-RC-22923, March 21, 2006 (Members Liebman, Schaumber, and Kirsanow)

(In the following cases, the Board granted requests for review of Decisions and Directions of Elections (D&DE) and Decisions and Orders (D&O) of Regional Directors)

Whole Foods Market California, Inc., San Francisco, CA, 20-RC-18069, March 23, 2006 (Members Liebman, Schaumber, and Kirsanow)

Miscellaneous Board Orders

ORDER[granting in part and denying in part the Employer's request for review of Regional Director's Decision and Direction of Election]

FedEx Home Delivery, A Separate Operating Division of FedEx Ground Package System, Inc., Northboro, MA, 1-RC-21966, March 23, 2006 (Members Liebman, Schaumber, and Kirsanow)

ORDER [granting request for special permission to appeal Regional Director's determination to conduct election by manual ballot and denying appeal on the merits]

Brink's U.S., Brooklyn, NY, 29-RC-11291, March 23, 2006 (Members Liebman, Schaumber, and Kirsanow)
